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Ways and means of expediting the work of the Committee

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Report of the Secretariat

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I. Introduction

1. The present report provides information requested by the Committee on the Elimination of Discrimination against Women at its twenty-fourth session (15 January to 2 February 2001) on its concluding comments on the reports of States parties to the Convention on the Elimination of All Forms of Discrimination against Women (chap. II), and on the practices of other human rights treaty bodies on reservations to human rights treaties (chap. III). It also contains information on relevant developments in other parts of the United Nations human rights regime (chap. IV).

2. Information on efforts made by the Special Adviser on Gender Issues and the Advancement of Women and the Director of the Division for the Advancement of Women of the Department of Economic and Social Affairs to encourage universal ratification of the Convention, ratification of its Optional Protocol, timely reporting, and acceptance of the amendment to article 20 (1) is included in chapter VI. Chapter V provides information on reports to be considered by the Committee at future sessions.

3. A list of States parties whose reports are more than five years overdue is contained in annex I. A list of States parties whose reports have been submitted but have not yet been considered by the Committee, together with the date of receipt of those reports, is contained in annex II. A list of those States parties that have signed, ratified or acceded to the Optional Protocol is contained in annex III. A list of those that have accepted the amendment to article 20 (1) is contained in annex V. A list of those States that have not ratified or acceded to the Convention is contained in annex IV. An opinion of the Office of Legal Affairs on the Convention and reservations is contained in annex VI.

II. Concluding comments of the Committee

4. At its thirteenth session, in January 1994, the Committee adopted the practice of adopting concluding comments on the reports of States parties before the Committee.[1] At that session, specific procedures were agreed for the preparation of concluding comments: that they should cover the most important points raised during the constructive dialogue, emphasizing both the positive aspects of the reports and matters on which the Committee has expressed concern, and should clearly indicate what the Committee wished the State party to focus on in its next report. The comments were to be concise and, where periodic reports were concerned, should take into account the findings of the pre-session working group, as well as the constructive dialogue. At the same session, the Committee decided to include in the concluding comments a section in which the Committee's view on reservations would be reflected for those States parties that have entered substantive reservations.[2]

5. At its fifteenth session, in January 1996, the Committee decided to dispense with the detailed summary of the constructive dialogue on the reports of States parties. Summary records were to be retained, and the concluding comments of the Committee would be preceded by a brief summary of the presentation of the State party concerned prepared by the Secretariat, which would consult the State party on its accuracy.[3]

6. At its sixteenth and seventeenth sessions, the Committee decided that the standard format for concluding comments would be: introduction; positive aspects; factors and difficulties affecting the implementation of the Convention; principal areas of concern; and suggestions and recommendations.[4] The procedures and format for concluding comments were revised at the Committee's nineteenth session, with a view to streamlining, while retaining flexibility.[5]

7. In accordance with the revised format adopted at the nineteenth session, the concluding comments:

(a) Are preceded by a summary of the State party's presentation, which is prepared by the Secretariat;

(b) Usually follow a standard format under four headings: introduction; positive aspects; factors and difficulties affecting the implementation of the Convention; principal areas of concern and recommendations;

(c) Include an introduction containing comments on whether the report has followed the Committee's guidelines for the preparation of initial and periodic reports; whether it was sufficient or insufficient; whether it incorporates or refers to statistical information disaggregated by sex, and the Committee's general recommendations; whether there are any reservations to the Convention; whether

reservations have been withdrawn; whether the State party has objected to the reservations of other States parties; whether the State party has mentioned the implementation of the Beijing Platform for Action and the nature and relevance of the oral presentation. An objective indication of the strengths of the report and the strength of the delegation is generally included;

(d) Include a "positive aspects" section organized in the order of the articles of the Convention;

(e) Describe in the "factors and difficulties" section major overarching reasons why the Convention has not been implemented fully by the State party. Any reservations to the Convention are also addressed in this section, as well as other legal impediments to the implementation of the Convention;

(f) Include a "principal areas of concern" section organized in the order of the importance of the particular issues to the country under review, and provide concrete proposals from the Committee on the problems identified in the rest of the comments;

(g) Include reference to any commitments of the State party made at the Fourth World Conference on Women;

(h) Include, where appropriate, specific suggestions to the State party with regard to possible technical assistance from the Office of the High Commissioner for Human Rights and other parts of the United Nations system, for example, in regard to reservations, review of legislation and law reform;

(i) Close with a recommendation relating to dissemination.

The Committee also decided that concluding comments would be internally balanced. It would strive to achieve consistency and balance, particularly in terms of praise and expressions of concern, in the concluding comments elaborated at each session. To that end, the Committee would consider the concluding comments comparatively, in an effort to ensure that they were even.

8. At its twenty-fourth session, the Committee requested the secretariat to prepare an analysis of its concluding comments, including an analysis with respect to length, balance and reflection of the concluding comments of other human rights treaty bodies. This request coincided with heightened interest in and scrutiny of the Committee's concluding comments by the press and other commentators.

9. The Committee has been provided with a compilation of the concluding comments that have been adopted since its thirteenth session. Those adopted at the thirteenth and fourteenth sessions[6] are relatively short, addressing in their introduction the quality of the report, whether it complied with the Committee's reporting guidelines and the nature of the constructive dialogue; identifying, in up to four paragraphs, positive aspects with regard to implementation; pointing to several principal areas of concern; and concluding with suggestions and recommendations. The format of concluding comments adopted at those sessions is diverse, with areas of concern not always mirrored by recommendations. Issues addressed in the concluding comments are also diverse, while the language used to express similar concerns or make similar recommendations for action varies.

10. Concluding comments adopted during the fifteenth to eighteenth sessions of the Committee are significantly longer than earlier concluding comments. As with earlier comments, the introductory part addresses the timeliness and quality of the report, whether other materials have been provided, the level of the delegation and the nature of the constructive dialogue between the delegation and the Committee. The "positive aspects" section has become more lengthy. The section on "factors and difficulties" is usually short, although the contents of this section vary. Thus, for example "factors and difficulties" relating to implementation in Cyprus include a reservation to the Convention, foreign occupation and social attitudes and practices;[7] in Iceland, the fact that Convention may not have fully been incorporated into domestic law;[8] in Ethiopia, deep-rooted customs and traditions, illiteracy, high birth rates, unemployment and the existence of different kinds of laws;[9] in Hungary, social and political transition, economic recession and the emergence of neoconservative and neoliberal ideas, as well as the change in attitudes towards the traditional family;[10] in Turkey, reservations to the Convention, globalization, modernization and deeply-rooted traditionalism;[11] in Canada, restructuring of the economy;[12] in Namibia, discrimination arising out of some traditional and customary laws, general lack of knowledge relating to human and legal rights and poverty;[13] in Antigua and Barbuda, lack of

financial and human resources for the compilation of statistics;[14] in Croatia economic and social difficulties as a consequence of the country's recent involvement in armed conflict, the repercussions of which included the presence of large numbers of refugees and displaced persons;[15] in Indonesia, the economic crisis, the existence of cultural attitudes confining women to the roles of mothers and housewives, and failure to collect data on issues such as domestic violence;[16] and in Mexico, the fact that legislation in some States contains discriminatory elements and the fact that the State party is a territorially vast, multi-ethnic and multicultural developing country with a difficult economic situation that affects the most vulnerable strata, and women in particular.[17] Some concluding comments, such as those on Denmark[18] do not include the "factors and difficulties" section.

11. The concluding comments adopted from the fifteenth to eighteenth sessions include a separate section relating to "principal areas of concern" and "suggestions and recommendations". Both sections are usually relatively long, and not all "concerns" are mirrored by "suggestions and recommendations". Concluding comments adopted at earlier sessions are less detailed or internally consistent with concluding comments on countries of the same region adopted at the same session.

12. Concluding comments adopted at later sessions, and particularly the eighteenth session, are detailed, contain "concerns" that are mirrored by "suggestions and recommendations", and include a paragraph requesting dissemination of the concluding comments, the Convention, the Committee's general recommendations and the Beijing Platform for Action. "Concerns" and "suggestions and recommendations" do not appear to be organized in accordance with the articles or with regard to the importance of the issue. Further, although occasional reference is made to International Labour Organization Conventions, including Convention No. 100 on Equal Remuneration for Men and Women Workers for Work of Equal Value, No. 103 on Maternity Protection, and No. 156 on Workers with Family Responsibilities and to regional human rights treaties, such as the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, concluding comments adopted during that period do not specifically mention other United Nations human rights treaties or refer to the concluding observations/comments of other treaty bodies on States parties under review.

13. Concluding comments adopted since the Committee revised its format for concluding comments, at its nineteenth session, include a short introductory section, usually no more than three paragraphs, which address the quality of the report, any other documentation submitted by the State party, the nature of the constructive dialogue with the Committee and the level and composition of the delegation. The "positive aspects" section, which notes issues such as the ratification or accession of the Optional Protocol to the Convention, acceptance of the amendment to article 20, paragraph 1, on the Committee's meeting time, the removal of reservations or striking advances in implementation in the State party, is usually under four paragraphs, although sometimes it can be up to 10 paragraphs. Concluding comments adopted at the twenty-second session contain longer, more detailed "positive aspects" sections than concluding comments adopted at other sessions.

14. The section on "factors and difficulties" is usually three paragraphs or less and identifies overarching factors which impede implementation. These have included: transition from a centrally controlled economy to a market-oriented economy (Belarus; China; Kazakhstan; Lithuania; Republic of Moldova; Mongolia; Romania; Slovakia; Uzbekistan); entrenched stereotypical or traditional approaches to gender roles, particularly the role of women (Chile; China; Democratic Republic of the Congo; Egypt; Georgia; Greece; Ireland; Jamaica; Jordan; Kazakhstan; Liechtenstein; Maldives; Mongolia; Republic of Korea; Slovakia; Thailand; United Republic of Tanzania); the persistence of practices prejudicial to the achievement of women's equality with men (Algeria; Burundi; India; Kyrgyzstan; Nepal; Nigeria); the legacy of apartheid (South Africa); legal pluralism leading to the perpetuation of discrimination against women (Nigeria; South Africa; United Republic of Tanzania); discriminatory laws (Algeria); poverty (Burkina Faso; India; Kyrgyzstan; Nepal; Panama; Peru); the servicing of foreign debt (United Republic of Tanzania); the impact of economic crisis (Burundi; Republic of Korea; Thailand); structural adjustment (Cameroon; Colombia); global and regional economic policies (Greece); reservations to the Convention (Algeria; Hong Kong Special Administrative Region; New Zealand; Thailand);

situation of women in the labour market (New Zealand); conflict and terrorist activity (Algeria; Burundi; Colombia; Democratic Republic of the Congo; Georgia; Myanmar); size and diversity of the State party (China); distances between the various territories of the State party (Maldives); multi-ethnic and multicultural character of the population and the presence of religion in public affairs (Belize); economic sanctions, embargoes or blockades (Cuba; Iraq); and environmental degradation (Uzbekistan). Several concluding comments note that are no factors or difficulties affecting implementation (Austria; Germany; Luxembourg; Spain; and United Kingdom of Great Britain and Northern Ireland).[19]

15. The "principal subjects of concern and the Committee's recommendations" section is usually extensive and detailed, frequently occupying 25 paragraphs. In general, concerns are mirrored by recommendations, which seek to be concrete but may be general and unspecific, providing less focused guidance for their implementation. Later concluding comments seek to organize concerns and recommendations in accordance with the importance of the issue rather than the order of the articles of the Convention, although some concluding comments are organized in this manner or list concerns and recommendations randomly. Concluding comments adopted at more recent sessions include three standard paragraphs urging ratification of the Convention's Optional Protocol and acceptance of the amendment to article 20.1; request that the specific concerns raised in the concluding comments be addressed in the State party's next periodic report; and request dissemination of the concluding comments, the Convention, the Committee's general recommendations, the Beijing Platform for Action and the results of the twenty-third special session of the General Assembly, "Women 2000: Gender Equality, Development and Peace for the Twenty-first Century".

16. Later concluding comments also indicate that the Committee has sought to ensure internal consistency as well as balance and consistency in the comments adopted at the particular session, particularly in regard to States parties from the same region or experiencing similar conditions. Similar language is usually used to address several specific issues, such as the failure of States parties to provide a definition of discrimination reflective of that in article 1 of the Convention; stereotypical attitudes towards gender roles; concerns and recommendations relating to article 4.1 on temporary special measures; violence against women; trafficking, and increasingly, women's reproductive health.[20] In general, also, the subject of the first "concern" and accompanying "recommendation" is any reservations that the State party may have with regard to articles of the Convention.[21] Notably, although concluding comments adopted since the nineteenth session sometimes note acceptance or implications of International Labour Organization[22] or regional human rights instruments,[23] it is unusual for other United Nations human rights treaties to be mentioned.[24] No concluding comments reflect the concluding observations/comments of other United Nations human rights treaty bodies on the same State party; nor do they make reference to recommendations of other human rights mechanisms, such as country-specific or thematic special rapporteurs.

17. In considering the current format and content of its concluding comments, the Committee may wish to take account of the views of one commentator (see para. 67 below) that, in general, the concluding observations/comments of human rights treaty bodies are often extremely general, thereby limiting their use in advocacy, planning and implementation, and that they often identify areas of concern without specifying specific laws or practices or connecting those concerns to specific recommendations.

18. That commentator has recommended that the current pattern of concluding comments should be modified to exclude those parts entitled "positive aspects" and "factors and difficulties impeding implementation". They should include specific information relating to the report or any other documentation and quality of the delegation in the introduction; include in the "concerns and recommendations" section a clear connection between the concerns and recommendations, with recommendations concentrating on concrete proposals that should be as practical and precise as possible. Recommendations, which should be grouped thematically and in order of priority, should clarify whether they relate to policies, practices or legislation, which should be identified. Concluding comments should conclude with a summary of additional information requested, including any deadlines for submission, and should address issues relating to dissemination and the processes or structures that the State party should establish for follow-up.

19. The commentator also suggests that the practice of including the summaries of the introductory remarks of Governments with the concluding comments on the country concerned in the report of the Committee be discontinued, since the Committee issues the only human rights treaty body report that includes such summaries. The Committee may wish to consider the views of the commentator as it seeks to refine further its concluding comments.

III. Practices of human rights treaty bodies on reservations

20. At its twenty-fourth session, in decision 24/III, the Committee requested that its secretariat prepare an analysis of the approaches of other human rights treaty bodies to reservations to human rights treaties in the consideration of States parties' reports and communications, for its consideration at its twenty-fifth session.

21. The Vienna Convention on the Law of Treaties, 1969, defines a reservation as "a unilateral statement, however, phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State".[25] Article 19 of the Vienna Convention provides that a State may formulate a reservation unless: "(a) the reservation is prohibited by the treaty; (b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or (c) in cases not falling under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty".[26] There is no explicit mechanism, beyond the mechanism of objections by other States parties, in the Vienna Convention, by which a reservation can be adjudged incompatible with the object and purpose of the treaty.

22. Adopted 10 years later, the Convention on the Elimination of All Forms of Discrimination against Women, in its article 28 (2), mirrors article 19 (c) of the Vienna Convention, providing that "a reservation incompatible with the object and purpose of the ... Convention shall not be permitted".

23. As a result of the many reservations entered to the Convention, the Committee on the Elimination of Discrimination against Women has been concerned with the issue of reservations since its inception. At its third session, the Treaty Section of the Office of Legal Affairs of the United Nations Secretariat provided a legal opinion, stating that "the functions of the Committee do not appear to include a determination of the incompatibility of reservations" (see annex VI). However, the Committee has continued to consider the question of reservations, adopted general recommendations 4 and 20 on reservations, and in its general recommendation 21 addressed reservations to article 16 of the Convention. It also adopted a statement on reservations to the Convention as its contribution to the commemoration of the fiftieth anniversary of the Universal Declaration of Human Rights.[27] In addition, its guidelines for the preparation of reports by States parties set out specific requirements for States with reservations.[28] Further, the Committee has consistently questioned States parties about their reservations and called for the review and withdrawal of the reservations.

24. The following surveys the response of the treaty bodies to reservations since the early 1990s, as reflected in their general recommendations/comments and reporting guidelines, in their constructive dialogue with States parties, and in their concluding observations.

A. Human Rights Committee

General comment 24

25. The Human Rights Committee, the treaty body established by the International Covenant on Civil and Political Rights, adopted general comment 24 concerning reservations, in November 1994.[29] In distinguishing a reservation from a declaration, the general comment provides that the Human Rights Committee will look to the intention of the State, rather than the form of the instrument. Paragraph 3 of the general comment states that "if a statement, irrespective of its name or title, purports to exclude or modify the legal effect of a treaty in its application to the State, it constitutes a reservation". In paragraph 6, the general comment declares that reservations under the Covenant and the first Optional Protocol are governed by the rules of general international law, with article 19 (c) of the Vienna Convention providing relevant guidance.[30]

26. Paragraphs 8-11 of the comment identify those reservations that the Human Rights Committee regards as contrary to the object and purpose of the Covenant. Thus, paragraph 8 provides that reservations that offend peremptory norms of general international law (jus cogens), which, for purposes of the Vienna Convention, are defined as norms that are accepted and recognized by the international community of States as a whole as norms from which no derogation is permitted,[31] would not be compatible with the object and purpose of the Covenant. Paragraph 8 states that "provisions in the Covenant that represent customary international law (and a fortiori when they have the character of peremptory norms) may not be the subject of reservations". According to the Committee, "a State may not reserve the right to engage in slavery, to torture, to subject persons to cruel, inhuman or degrading treatment or punishment, to arbitrarily deprive persons of their lives, to arbitrarily arrest and detain persons, to deny freedom of thought, conscience and religion, to presume a person guilty unless he proves his innocence, to execute pregnant women or children, to permit the advocacy of national, racial or religious hatred, to deny to persons of marriageable age the right to marry, or to deny to minorities the right to enjoy their own culture, profess their own religion, or use their own language".[32]

27. Paragraph 9 describes reservations to certain articles of the Covenant that would be incompatible with the object and purpose of the Covenant, as including: a reservation to article 1 of the Covenant denying peoples the right to determine their political status and pursue their economic, social and cultural development; a reservation to the obligation under article 2 (1) of the Covenant to respect and ensure to all individuals within a State party's territory and subject to its jurisdiction the rights recognized in the Covenant, without distinction of any kind; and reserving an entitlement not to take the necessary steps at the domestic level by adopting legislative or other measures to give effect to the rights recognized in the Covenant, as provided in article 2 (2) of the Covenant.

28. According to the Committee, another category of unacceptable reservations would be reservations designed to remove the supportive guarantees contained in the Covenant which provide the necessary framework for securing the rights therein (para. 11). For example, in the Committee's views, a State could not make a reservation to article 2 (3) of the Covenant, stating its intention not to provide remedies for human rights violations. Reserving the right not to present a report and have it considered by the Committee and a reservation that rejected the Human Rights Committee's competence to interpret the Covenant would also be considered unacceptable.

29. Paragraph 12 expresses particular concern about widely formulated reservations which essentially render ineffective all Covenant rights, implying that such reservations are often contrary to the object and purpose of the Covenant.

30. With respect to the first Optional Protocol, which, inter alia, provides for individual communications, the general comment indicates that a reservation to an obligation under the Covenant cannot be made through the vehicle of the first Optional Protocol. In addition, since the object and purpose of the Optional Protocol is to allow the rights under the Covenant to be tested before the Committee, a reservation intending to preclude this would be contrary to the object and purpose of the Optional Protocol. Reservations relating to the required procedures under the first Optional Protocol would also be incompatible with the object and purpose of the Optional Protocol (paras. 13-14 of the general comments). In this regard, it is to be noted that reservations to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women are not permitted (see article 17 of the Optional Protocol).

31. General comment 24 also addresses, in paragraphs 16-18, the role of the Human Rights Committee with regard to reservations. The comment suggests that the classic rules on reservations contained in the Vienna Convention on the Law of Treaties — in particular, the provisions on the role of State objections in relation to reservations — are inadequate for the Covenant and other human rights treaties, since those treaties concern the rights of individuals and not mutual obligations between States, as is the case with other treaties. It notes that States have often not seen any legal interest in, or need to, object to reservations to treaties concerning the rights of individuals, and in any event, the pattern of objections is so unclear that "it is not safe to assume that a non-objecting State thinks that a particular reservation is acceptable". The Committee concludes in paragraph 18 of the general comment:

> It necessarily falls to the Committee to determine whether a specific reservation is compatible with the object and purpose of the Covenant. This is in part because ... it is an inappropriate task for States parties in relation to human rights treaties, and in part because it is a task that the Committee cannot avoid in the performance of its functions. In order to know the scope of its duty to examine a State's compliance under article 40 [the reporting obligation in the Covenant] or a communication under the first Optional Protocol, the Committee has necessarily to take a view on the compatibility of a reservation with the object and purpose of the Covenant and with general international law. Because of the special character of a human rights treaty, the compatibility of a reservation with the object and purpose of the Covenant must be established objectively, by reference to legal principles, and the Committee is particularly well placed to perform this task. The normal consequence of an unacceptable reservation is not that the Covenant will not be in effect at all for a reserving party. Rather, such a reservation will generally be severable, in the sense that the Covenant will be operative for the reserving party without benefit of the reservation.

32. Paragraph 19 of the general comment offers general guidance to States on reservations. It stresses that reservations should be specific and transparent so that the obligations assumed by the ratifying States are clear. Reservations should, thus, be precise, rather than general. States should take into account the overall effect of a group of reservations, as well as the effect of each reservation on the integrity of the Covenant. Multiple reservations resulting in the acceptance of a limited number of obligations should be avoided, and reservations should not be framed so as to reduce the obligations assumed to less demanding standards of domestic law.

33. Paragraph 20 of the general comment sets out various duties for a reserving State, including the duty that it should institute procedures to ensure that each reservation is compatible with the object and purpose of the Covenant; that it should indicate in precise terms the domestic legislation or practices which it considers incompatible with the reserved provisions, delineating a time period required to adjust domestic laws and practices to conform with the Covenant or indicating why it cannot render domestic laws and practices compatible with the treaty. The guidelines issued by the Human Rights Committee for States parties' reports under the Covenant similarly provide that any reservation to any article of the Covenant should be explained and its continued maintenance justified.[33]

34. Paragraph 20 of the general comment further provides that reservations should be periodically reviewed, taking into account the Committee's observations and recommendations during examination of the State party's report, which should include information concerning action that has been taken to review, reconsider and withdraw reservations. Withdrawal of reservations should occur as early as possible.

35. Three States parties to the Covenant submitted observations on the Human Rights Committee's general comment 24.[34] Those observations queried the Committee's view that the classic rules on reservations contained in the Vienna Convention on the Law Of Treaties were inadequate for human rights treaties and the suggestion that the Committee had the authority to make final determinations on the validity of reservations and sever those it determined to be unacceptable.

36. At its forty-sixth session, in 1994, the International Law Commission appointed Mr. Alain Pellet Special Rapporteur for the topic, "the law and practice relating to reservations to treaties" (subsequently changed to "reservations to treaties"), and at its forty-ninth session, in 1997, adopted "Preliminary conclusions of the International Law Commission on reservations to normative multilateral treaties including human rights treaties".[35] Those preliminary conclusions indicated that the Vienna Convention is applicable to reservations to human rights treaties, but they also recognized that, where those treaties are silent on the subject, the human rights treaty bodies "are competent to comment upon and express recommendations with regard, inter alia, to the admissibility of reservations by States, in order to carry out the functions assigned to them". Under the preliminary conclusions, "in the event of inadmissibility of a reservation, it is the reserving State that has the responsibility for taking action". The International Law Commission is continuing to consider the issue of reservations.

37. Building on its recommendation that the treaty bodies should require States parties to explain their

reservations and should clearly state that certain reservations were incompatible with treaty law made at its fifth meeting in 1994,[36] the sixth meeting of Chairpersons of Human Rights Treaty Bodies, in 1995, welcomed and endorsed the Human Rights Committee's general comment 24.[37] The ninth meeting of Chairpersons of Human Rights Treaty Bodies, in 1998, discussed the International Law Commission's preliminary conclusions, and the chairperson submitted a letter to the Commission on behalf of all the chairpersons. In that letter,[38] the Chairpersons welcomed the role the Commission assigned to human rights bodies with respect to reservations but considered the text "unduly restrictive in other respects". The Chairpersons felt that the preliminary conclusions "[did] not accord sufficient attention to the fact that human rights treaties, by virtue of their subject matter and the role they recognize to individuals, [could] not be placed on precisely the same footing as other treaties with different characteristics". The Chairpersons "expressed their firm support for the approach reflected in General Comment No. 24 of the Human Rights Committee and urged that the conclusions proposed by the ILC should be adjusted accordingly to reflect that approach".

38. Consistent with general comment 24, a working paper of the Subcommission on the Promotion and Protection of Human Rights on the question of reservations to human rights treaties state that:

> It does not appear to be disputed that enforcement/monitoring bodies have the authority to determine what comes within their competence. That must, logically, include the authority to determine the validity of a reservation which would affect the scope of their competence or jurisdiction.[39]

39. In its decision 2000/26 of 18 August 2000, the Subcommission took note of the working paper, endorsed the conclusions therein, and decided to appoint Ms. Françoise Hampson as Special Rapporteur to prepare a comprehensive study on reservations.[40]

Constructive dialogue and concluding observations

40. In their dialogue with States parties, members of the Human Rights Committee have consistently raised questions as to the nature of, and reasons for reservations, discussed the domestic laws and policies concerned, and informed States parties of their views as to the validity of the reservations. They have also pointed out the effect of unacceptable reservations. For example, in considering the initial report of Kuwait in 2000, members of the Committee questioned the State party about its interpretative declarations in respect of articles 2 and 3 of the Covenant, which stated that the rights referred to in those articles would be exercised within the limits set by Kuwaiti law. Members of the Committee stressed that the State party's interpretative declarations amounted to reservations, which were "not an acceptable reading of the Covenant".[41] One member of the Committee indicated that the State party "should not be surprised if the Committee ignored [the interpretative declarations]". During the review of the initial report of Israel in 1998, members raised questions about the State party's reservation to article 23 of the Covenant (right of the family to protection), pursuant to which the State party reserved the right to apply religious law, which governed matters of personal status, to the extent that such law was inconsistent with its obligations under the Covenant. A member of the Committee noted that the State party's "sweeping reservation raised serious questions and could even compromise the very purpose of the Covenant and the international human rights protection instruments" and that there was "no justification for such a broad reservation".[42]

41. In its concluding observations, the Human Rights Committee has frequently expressed concern, regret and disappointment about States parties' reservations and recommended the withdrawal of the reservations as well as the amendment to domestic laws and policies so that they comply with the Covenant. The Committee has cited a State party's reservations as a "factor and difficulty" impeding the application of the Covenant,[43] and made pronouncements on the incompatibility of certain reservations. In its concluding observations on the initial report of Kuwait, the Committee noted that the interpretative declaration regarding articles 2 and 3 of the Covenant, which constituted "core rights and overarching principles of international law", raised the serious issue of its "compatibility with the object and purpose of the Covenant".[44] The Committee found that the interpretative declaration "contravene[d] the State party's essential obligations under the Covenant and [was] therefore without legal effect and [did] not affect the powers of the Committee". The Committee formally urged the State party to withdraw the interpretative declaration.

42. In its concluding observations on the initial report of the United States of America, in 1995, the Committee regretted "the extent of the State party's reservations, declarations and understandings" which, in its view, "taken together...intended to ensure that the United States [had] accepted only what [was] the law of the United States".[45] The Committee expressed its particular concern at the reservation to article 6 (5), under which the State party reserved the right to impose capital punishment for crimes committed by persons below 18 years of age, and the reservations to article 7, which stated that the State party would be bound by that article to the extent that cruel, inhuman or degrading treatment or punishment meant cruel and unusual treatment or punishment prohibited by domestic law.[46] The concluding observations stated that the Committee believed those reservations "to be incompatible with the object and purpose of the Covenant" and recommended that the State party review its reservations, declarations and understandings with a view to withdrawing them.

Communications

43. The practice of the Human Rights Committee in respect of reservations to the first Optional Protocol to the International Covenant on Civil and Political Rights has varied, dependent on whether the Committee has considered a reservation to be contrary to the object and purpose of the treaty, or acceptable. Thus, the Committee has made determinations whether such reservations were valid. In *Rawle Kennedy v. Trinidad and Tobago* (Communication No. 845/1999), the Committee considered the admissibility of the communication, which was subject to a reservation by the State party concerned, and determined the reservation to be invalid and considered the case.[47] Here, the State party had denounced the Optional Protocol and entered a reservation on re-accession, which rejected the competence of the Committee "to receive and consider communications relating to any prisoner who is under sentence of death in respect of any matter relating to his prosecution, his detention, his trial, his conviction, his sentence or the carrying out of the death sentence on him and any matter connected therewith".[48] The Committee explained that the reservation purported to exclude the competence of the Committee in respect of one particular group of complainants — namely, prisoners under sentence of death — and the Committee could not accept "a reservation which single[d] out a certain group of individuals for lesser procedural protection than that which [was] enjoyed by the rest of the population".

44. In cases where the Committee has found a reservation to be valid, it has not considered the aspects of the communication covered by the reservation.[49] For example, Germany's reservation precludes the Committee from considering a communication that had already been considered under another procedure of international investigation or settlement.[50] The Committee determined that certain aspects of a relevant communication relating to Germany had been "considered" by another international mechanism, and that the reservation applied to those aspects of the communication, therefore precluding the Committee from examining such aspects. Austria had entered a reservation precluding the Committee from considering any communication unless it had ascertained that the same matter had not been examined by the European Commission of Human Rights.[51] In a relevant communication, the Committee considered that the European Commission had not "examined" the complaint since it had dismissed it on procedural grounds, and thus the Committee concluded that it was not precluded by the reservation from considering the communication.

B. Committee against Torture

45. In their dialogue with States parties, members of the Committee against Torture, the treaty body established by the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment, have raised questions about States parties' reservations, requested the reasons for the reservations and asked States parties whether they intended to withdraw those reservations. On a number of occasions, questions have been raised in respect of reservations to article 20 (inquiry procedure) and the failure of States parties to recognize the Committee's competence under articles 21 (inter-State communications) and 22 (individual communications).[52]

46. In its concluding observations, the Committee against Torture has expressed concern about States parties' reservations and recommended that they review and withdraw them, and, in respect of articles 21 and 22, issue the declarations recognizing the Committee's competence thereunder. For example, in

its concluding observations on the second periodic report of Morocco, in 1999, the Committee emphasized its concern about the maintenance of reservations to article 20 and the lack of declarations in respect of articles 21 and 22, which "considerably restrict[ed] the scope of the Convention", and recommended that the State party withdraw the reservations and make the relevant declarations.[53] In its concluding observations on the initial report of New Zealand, in 1993, the Committee pointed out that the State party's reservation to article 14, regarding compensation for victims of torture, concerned "one of the core articles of the Convention" and "expressed the hope" that the State party "would review that reservation to ensure its full compliance with the articles of the Convention".[54] In another instance, the Committee indicated that a State party's reservation concerning article 16 and the meaning of cruel, inhuman or degrading treatment or punishment was "in violation of the Convention, the effect of which [was] to limit the application of the Convention", and recommended the withdrawal of that reservation.[55]

C. Committee on the Elimination of Racial Discrimination

47. Article 20 (2) of the International Convention on the Elimination of All Forms of Racial Discrimination provides that:

> A reservation incompatible with the object and purpose of this Convention shall not be permitted, nor shall a reservation the effect of which would inhibit the operation of any of the bodies established by the Convention be allowed. A reservation shall be considered inhibitive if at least two thirds of the States Parties to this Convention object to it.

48. Although some members of the Committee on the Elimination of Racial Discrimination, the treaty body established by the International Convention on the Elimination of All Forms of Racial Discrimination, have indicated that, in their view, the question of reservations was essentially a matter for States parties, other members of the Committee have regularly questioned States parties about their reservations, including the purpose and application of the reservations, and have stated their opinion that certain reservations and the policies which they reflect were unacceptable.[56] For example, in considering the initial report of Switzerland, in 1998, members of the Committee discussed the State party's reservation to article 2 (1) (a), under which the State party reserved the right to apply its legal provisions concerning the admission of foreigners to the Swiss labour market.[57] The State party's report had explained that Swiss policy towards foreigners was based on a "three circle" model whereby persons from countries belonging to the inner circle enjoy a fairly relaxed regime; persons belonging to the middle circle could be recruited within a limited framework and enjoy certain facilities; and persons belonging to the outer circle, or coming from non-traditional recruitment countries, were admitted on an exceptional basis only, if they were highly skilled or had come to do a training course.[58] A member of the Committee stressed that the "three circle" model, "which was covered by the reservation, was indeed contrary to the object and purpose of the Convention".[59] On another occasion, a member pointed out that a State party's "reservations to certain essential provisions, particularly article 5 (c) on political rights, article 5 (d) (v) on the right to own property, and articles 2, 3 and 5 (e) with regard to the right to an education ... were incompatible with the goal and purpose of the Convention".[60]

49. In its concluding observations, the Committee has expressed concern about States parties' reservations and recommended the withdrawal of the reservations. For example, in its concluding observations on the fourteenth report of Nepal, in 2000, the Committee remained concerned that the "full implementation of" the reserved articles 4 (obligation to, inter alia, adopt measures to eradicate discrimination) and 6 (obligation to ensure effective protection and remedies) "may not be ensured" and reiterated its previous recommendation that the State party should consider withdrawing the reservation.[61] In its concluding observations on the initial and second periodic report of Japan, in 2001, the Committee noted the State party's reservation to article 4 (a) and (b) of the Convention, which provided that the State party "'fulfil[ed] the obligations under those provisions to the extent that fulfilment ... [was] compatible with the guarantee of the rights to freedom of assembly, association and expression and other rights under the Constitution of Japan'".[62] The Committee expressed concern that the reservation was "in conflict with the State party's obligations under article 4 of the Convention" and pointed out that, under one of the Committee's general recommendations, article 4 was of a mandatory nature. In another

example, also dealing with the provisions of article 4 of the Convention, the concluding observations on the fourteenth periodic report of the United Kingdom of Great Britain and Northern Ireland, in 1997, cited the State party's "restrictive interpretation" of article 4 as a "factor and difficulty" impeding the implementation of the Convention and emphasized that such interpretation "may hamper the full implementation of the provisions of the Convention".[63]

D. Committee on Economic, Social and Cultural Rights

50. During general discussions concerning reservations to the International Covenant on Economic, Social and Cultural Rights, members of the Committee on Economic, Social and Cultural Rights, the treaty body that monitors by the Covenant, have pointed out that there were fewer reservations lodged to this Covenant than to other human rights treaties. Nevertheless, the Committee has questioned States parties about their reservations; in particular, it has raised questions about reservations in the lists of issues raised with respect to reports of States parties, posing questions as to why reservations were necessary and the time-frame for their withdrawal.[64] In their dialogue with States parties, Committee members have raised questions regarding reservations to other treaties, which were relevant to the Covenant. For example, during the consideration of the initial report of Algeria, in 1995, a member of the Committee raised questions concerning a reservation that the State party had entered in respect of the International Covenant on Civil and Political Rights.[65] As with the other treaty bodies, the Committee has encouraged States parties to withdraw their reservations in its concluding observations. [66]

E. Committee on the Rights of the Child

51. A large number of reservations have been entered to the Convention on the Rights of the Child. In a provision similar to article 28 (2) of the Convention on the Elimination of All Forms of Discrimination against Women, article 51 (2) of the Convention on the Rights of the Child provides that: "A reservation incompatible with the object and purpose of the present Convention shall not be permitted". The guidelines for States parties' periodic reports issued by the Committee on the Rights of the Child, the treaty body established by the Convention, contain a provision on reservations as follows:

> In the spirit of the World Conference on Human Rights, which encouraged States to consider reviewing any reservations with a view to withdrawing it ... please indicate whether the Government considers it necessary to maintain the reservations it has made, if any, or has the intention of withdrawing them.[67]

52. It will be recalled that the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, 1993, provided that:

> The World Conference on Human Rights encourages States to consider limiting the extent of any reservations they lodge to international human rights instruments, formulate any reservations as precisely and narrowly as possible, ensure that none is incompatible with the object and purpose of the relevant treaty and regularly review any reservations with a view to withdrawing them.[68]

53. The Committee on the Rights of the Child has systematically questioned States parties about their reservations, expressed concerns about the compatibility of reservations with the Convention, and urged States parties to withdraw reservations. During their dialogue with States parties, members of the Committee have queried the purpose, reasons and justification for reservations and indicated when, in their view, declarations amounted to reservations.[69] They have also expressed their views as to reservations they considered unnecessary, unjustified or in contradiction to the Convention.[70] For example, during the review of the initial report of Syrian Arab Republic, in 1997, a member of the Committee stated his view that "the fact that the Syrian Constitution enshrined the Shari'a as supreme law did not justify the reservations made by the Government to certain articles of the Convention".[71]

54. Members of the Committee have urged States parties to withdraw their reservations. In one instance, during the consideration of the initial report of Iraq, in 1998, a member of the Committee asked whether the State party would consider withdrawing its reservation to article 14 (1) of the Convention, concerning the right of the child to freedom of religion,[72] "since certain Islamic countries, such as Egypt and Tunisia, did not

consider that provision to be at variance with the Shariah".[73] During the consideration of the initial report of Thailand, in 1998, a member of the Committee noted that the State party had ratified the International Covenant on Civil and Political Rights without any reservations and encouraged the State party to withdraw its reservations to the Convention on the Rights of the Child.[74] During the consideration of the initial report of Argentina, in 1994, members of the Committee discussed the State party's reservation to article 21 (b)-(e), which stated that those provisions could not apply in Argentina because it was felt that there must first be a mechanism to ensure the legal protection of children in matters of inter-country adoption in order to prevent the trafficking and sale of children. A member of the Committee pointed out that the State party's reservation to article 21 "endangered several of the Convention's main principles" and "exhorted [the State party] to reconsider their reservation".[75]

55. In its concluding observations, the Committee has regularly expressed concern, including "deep concern", about reservations and their incompatibility with the Convention, and recommended withdrawal of the reservations in accordance with the 1993 Declaration and Programme of Action of the Vienna World Conference on Human Rights.[76] For example, in its concluding observations on the initial report of Saudi Arabia, in 2001, the Committee raised concerns about the "broad and imprecise nature" of the State party's general reservation which "potentially negate[d] many of the Convention's provisions, and raise[d] concern as to its compatibility with the object and purpose of the Convention as well as the overall implementation of the Convention".[77] The State party had entered "reservations concerning all articles conflicting with the provisions of Islamic law".[78] The Committee recommended that Saudi Arabia withdraw its reservation. In another example, the Committee expressed concern about the "broad nature" of reservations entered by the State party, "which rais[ed] questions as to their compatibility with the object and purpose of the Convention," and encouraged the State party "to take steps to withdraw its reservations".[79]

56. In several concluding observations, the Committee has stated its view that a reservation was unnecessary and should be withdrawn. Examples include the concluding observations on the second periodic reports of Jordan in 2000 and Egypt in 2001.[80] In the concluding observations on the initial report of Thailand, discussed above, the Committee noted that Thailand had recently ratified without reservation the International Covenant on Civil and Political Rights and encouraged the State party to review its reservations to the Convention on the Rights of the Child, with a view to withdrawing them.[81]

IV. Developments in the human rights regime

A. Human Rights Committee

57. At its seventy-first session in March/April 2001, the Human Rights Committee adopted new rules of procedure to address cases where States parties fail on a long-term basis, despite reminders, to submit initial or periodic reports. According to the new rules, the Committee may, at its discretion, notify the relevant State party through the Secretary-General that it intends, on a date or at a session specified in the notification, to examine in a private session the measures taken by the State party to give effect to the rights recognized in the Covenant and proceed by adopting provisional concluding comments which will be submitted to the State party. The Committee is obliged to transmit to the State party, at least three months before the date or the session specified, information in its possession which it considers appropriate to the examination.[82]

58. The Human Rights Committee also adopted new rules of procedure to address the case where, having submitted a report that has been listed at a session for examination, a State party informs the Committee, at a time when it is impossible to substitute an alternative State party report, that its delegation will not attend the session. Under these rules, the Committee may notify the State party through the Secretary-General that it intends to examine the report at a specified future session or proceed at the same session originally specified to examine the report and adopt provisional concluding observations and determine the date on which the report shall be examined or the date on which a new periodic report shall be submitted.[83] Situations dealt with in accordance with these rules of procedure shall be reflected in the Committee's annual report, which will not include the text of the provisional concluding observations.[84] The new rules of procedure are reflected in the consolidated

guidelines for States parties reports under the International Covenant on Civil and Political Rights.[85]

B. Committee on Economic, Social and Cultural Rights

59. At its twenty-fifth session (23 April to 11 May 2001), the Committee on Economic, Social and Cultural Rights adopted a number of decisions with regard to working methods. Those included a decision to limit the number of questions in the list of issues and questions submitted to States parties presenting periodic reports to 25, except in the case of grossly inadequate reports. It also decided to limit requests for written information to statistical data; information requested in the Committee's reporting guidelines, but missing from the report; points of clarification regarding the report; and information on key legal, structural, policy or institutional issues or new developments.

60. In order to enhance constructive dialogue with States parties, the Committee decided, prior to the dialogue with States parties, to discuss, in a private "coordination meeting", the main issues concerning the State party, and to confer about how to approach cross-cutting issues. Experts from the secretariat could be invited to inform the Committee on issues relating to Covenant implementation in the State party concerned. Committee members would be named as the main commentators on each question/article/issue, and other Committee members, except for the country rapporteur who could intervene at any time, would not take up matters addressed by the main commentator and would limit their interventions to less than three minutes. At the beginning of the dialogue the Chairperson would indicate which Committee members would take the lead on particular articles or issues.

61. The Committee also decided to extend its current practice of considering situations in States parties whose initial reports are very significantly overdue in the absence of a report to States parties whose periodic reports were significantly overdue.

C. Commission on Human Rights

62. At its fifty-seventh session (19-27 April 2001), the Commission on Human Rights adopted a number of resolutions relevant to the work of the Committee. In resolution 2001/48, on traffic in women and girls, it, inter alia, invited human rights treaty bodies to participate in and contribute to the work of the Working Group on Contemporary Forms of Slavery at its twenty-sixth session, in 2001, which would focus on the issue of trafficking; in resolution 2001/49, on the elimination of violence against women, it reminded Governments that their obligations under the Convention on the Elimination of All Forms of Discrimination against Women must be implemented fully with regard to violence against women and take into account general recommendation 19, and requested the reports of the Special Rapporteur on violence against women to be brought to the attention of the Committee; and in resolution 2001/50, on integrating the human rights of women throughout the United Nations system, it welcomed the entry into force of the Optional Protocol, encouraged all United Nations entities to pay attention to the recommendations of the Committee, and urged universal ratification of the Convention, acceptance of the Optional Protocol, limitation of any reservations and implementation of the Convention.

63. In its resolutions on Iraq (2001/14) and Myanmar (2001/15), the Commission referred to its concluding comments on those countries, and in the case of Myanmar strongly urged the Government to implement fully the recommendations of the Committee, in particular the request to prosecute those who violate the human rights of women and to carry out human rights education and gender-sensitization training, in particular for military personnel.

64. In a number of resolutions it invited human rights treaty bodies to give particular attention to their subjects in the review of States parties' reports. They included resolution 2001/34, on women's equal ownership of, access to and control over land, and the equal rights to own property and to adequate housing; resolution 2001/51, on the protection of human rights in the context of the human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS); resolution 2001/31, on human rights and extreme poverty in which the Commission specifically invited the Committee on the Elimination of Discrimination against Women to take into account, when considering the reports of States parties, the question of extreme poverty and human rights, and resolution 2001/32, on globalization and its impact on the full enjoyment of all human rights.

65. In several resolutions, including 2001/5, on racism, racial discrimination and related intolerance; 2001/25, on the right to food; 2001/28, on adequate housing as a component of the right to an adequate standard of living; and 2001/52, on the human rights of migrants, the Commission called for cooperation between, or exchange of information among, treaty bodies and rapporteurs. In several resolutions, including 2001/30 on the realization in all countries of the economic, social and cultural rights, the Commission noted the entry into force of the Optional Protocol and encouraged its further ratification or accession, and also decided on the appointment of an independent expert to examine the question of a draft optional protocol to the International Covenant on Economic, Social and Cultural Rights. In resolution 2001/76, on equitable geographical distribution of the membership of the human rights treaty bodies, the Commission decided to recommend that the General Assembly encourage States parties to the United Nations human rights instruments to establish quota systems by geographical region for the election of the members of the treaty bodies.

66. The Commission also discussed strengthening support to and enhancing effectiveness of the treaty bodies under its agenda item 18, "effective functioning of the human rights mechanisms", during which Member States raised issues with regard to duplication, streamlining of reporting and coordination and information-sharing among human rights treaty bodies.

D. Report on the operation of the United Nations treaty system

67. Comprehensive recommendations for the enhancement of the operations of the United Nations treaty system are proposed in a study, entitled "The United Nations human rights system: universality at the crossroads", by Professor Anne Bayefsky of York University, Toronto, Canada. The study, which was commenced in 1999, was conducted in collaboration with UNCHR, with the support of the Ford Foundation. It has been made available to members of the Committee.

V. Reports to be considered at future sessions of the Committee

68. At its twenty-fourth session, the Committee drew up the list of States parties whose reports would be considered at future sessions. The Committee decided that at its twenty-sixth session, in January/February 2002, the initial report of Trinidad and Tobago, the combined second and third periodic report of Equatorial Guinea, the combined second and third periodic report of Uruguay, the combined third and fourth periodic report of Iceland, the combined third and fourth periodic report of Sri Lanka, the fourth periodic report of Portugal and the fifth periodic report of the Russian Federation would be considered. Equatorial Guinea will be unable to present its report at the twenty-sixth session. In finalizing the list of States parties to be considered at the twenty-sixth session, the Committee may wish to take account of the fact that the initial report of Fiji has not been considered.

69. Insofar as the twenty-seventh session is concerned, the Committee decided that it would consider the combined third and fourth periodic report of Zambia, the fourth periodic report of Japan, the combined fourth and fifth periodic report of Ukraine, and the fourth and fifth periodic reports of Denmark. Japan has indicated that it will submit its fifth periodic report in July 2002 and that it would like its fourth and fifth periodic reports to be taken up together at a later session. In finalizing the list for the twenty-seventh session and drawing up the lists for future sessions, the Committee may wish to recall that at its twenty-seventh session it decided that, in the event that States parties nominated to present reports at that session were unable to do so, it would take up the combined third and fourth periodic report of Belgium, the combined third and fourth periodic report of Kenya or the combined third and fourth periodic report of Tunisia and annex II, which contains a list of States parties which have submitted reports which have not been considered and provides information on those reports available in the languages of the United Nations.

VI. Efforts to encourage universal ratification of the Convention, ratification of the Optional Protocol and acceptance of the amendment to article 20 (1)

70. The Special Adviser to the Secretary-General on Gender Issues and Advancement of Women and the Director of the Division for the Advancement of Women have continued their efforts to encourage universal ratification of the Convention, acceptance of the Optional Protocol, the amendment to article 20 (1), and fulfilment of reporting obligations.

71. The Special Adviser raised these issues during her statements to the Third African Women's Forum on Women and Conflict Management in Africa, (Tunis, Tunisia, 22-24 January 2001), the Workshop on Gender Mainstreaming and the Least Developed Countries, (Cape Town, South Africa, 21-23 March 2001), the 105th Conference of the Inter-Parliamentary Union (1-7 April 2001), and the fourth joint workshop organized by the Inter-Agency Committee on Women and Gender Equality/OECD/DAC Working Party on Women and Gender Equality (Vienna, Austria, 23-25 April, 2001). The Director participated in a panel discussion during the Conference of the Inter-Parliamentary Union on the Optional Protocol which aimed to raise awareness among parliamentarians of the Convention and the Protocol. Both the Special Adviser and the Director regularly discuss ratification and reporting in their bilateral meetings with Member States, while the United Nations Children's Fund (UNICEF), the United Nations Development Programme (UNDP), the United Nations Development Fund for Women (UNIFEM) and the regional commissions have been requested to assist in this context in their activities at national level.

72. In collaboration with the Government of New Zealand, the Economic and Social Commission for Asia and the Pacific (ESCAP), and UNDP, the Division for the Advancement of Women organized a subregional training workshop in Auckland, New Zealand, from 13 to 15 February 2001 to encourage ratification and reporting among the countries of the Pacific.

Notes

[1] *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 38* (A/49/38), paras. 812-817.

[2] Ibid., chap. 1, sect. C, para. 10.

[3] Ibid., *Fifty-first Session, Supplement No. 38* (A/51/38), chap. I, decision 15/III.

[4] Ibid., *Fifty-second Session, Supplement No. 38* (A/52/38/Rev.1), part I, paras. 355-361, and part II, para. 471.

[5] Ibid., *Fifty-third Session, Supplement No. 38* (A/53/38/Rev.1), part II, decision 19/II.

[6] A number of concluding comments on reports presented at the thirteenth session were deferred and adopted at the fourteenth session. In deciding to adopt those concluding comments, the Committee noted that the deferral was exceptional. Ibid., *Fiftieth Session, Supplement No. 38* (A/50/38), para. 592.

[7] Ibid., *Fifty-first Session, Supplement No. 38* (A/51/38), paras. 43-45.

[8] Ibid., para. 74.

[9] Ibid., para. 139.

[10] Ibid., paras. 238-240.

[11] Ibid., *Fifty-second Session, Supplement No. 38* (A/52/38), paras. 163-164.

[12] Ibid., para. 321.

[13] Ibid., paras. 95-97.

[14] Ibid., para. 249.

[15] Ibid., *Fifty-third Session, Supplement No. 38* (A/53/38), para. 101.

[16] Ibid., paras. 281-283.

[17] Ibid., paras. 387-388.

[18] Ibid., *Fifty-second Session, Supplement No. 38* (A/52/38), paras. 254-281.

[19] Nineteenth session: New Zealand, Nigeria, Panama, Peru, Republic of Korea, Slovakia, South Africa, United Republic of Tanzania; twentieth session: Algeria, China, Colombia, Greece, Kyrgyzstan, Liechtenstein, Thailand; twenty-first session: Belize, Chile, Georgia, Ireland, Nepal, Spain, United Kingdom of Great Britain and Northern Ireland; twenty-second session: Belarus, Burkina Faso, Democratic Republic of the Congo, Germany, India, Jordan, Luxembourg, Myanmar; twenty-third session: Austria, Cameroon, Cuba, Iraq, Lithuania, Republic of Moldova, Romania; twenty-fourth session: Burundi, Egypt, Finland, Jamaica, Kazakhstan, Maldives, Mongolia, Uzbekistan.

[20] See, for example, twenty-third session: Cameroon; twenty-fourth session: Kazakhstan, Maldives, Uzbekistan. With regard to women's reproductive health, see twenty-fourth session: Burundi, Kazakhstan, Uzbekistan, Jamaica.

[21] See, for example, twenty-fourth session: Maldives, Egypt; twenty-third session: the third concern identified in regard to Iraq.

[22] Jordan: twenty-second session, paras. 184 and 185.

[23] The concluding comments on the United Kingdom of Great Britain and Northern Ireland, which discuss the protection provided to women in the European Convention on Human Rights and Fundamental Freedoms (twenty-first session, para. 300); the concluding comments on Jamaica (twenty-fourth session) urge ratification of the Inter-American Convention for the Prevention, Sanction and Eradication of Violence against Women.

[24] An exception in this regard are the comments adopted on Thailand which recommend that a proposed children's rights law is consistent both with the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child (twentieth session, para. 235).

[25] Vienna Convention (United Nations, *Treaty Series*, vol. 1,155, No. 18,232, p. 331), article 2 (1)(d).

[26] Article 19 of the Vienna Convention adopts a flexible approach, permitting States individually to decide on the admissibility of a reservation. This approach was advanced by the International Court of Justice in *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, 28 May 1951.

[27] A/53/38/Rev.1, pp. 47-50.

[28] CEDAW/C/7/Rev.3, para. 9.

[29] CCPR/C/21/Rev.1/Add.6.

[30] Neither the Covenant nor the first Optional Protocol contains any specific provisions on reservations. However, the second Optional Protocol addresses reservations in article 2 (1).

[31] See article 53 of the Vienna Convention on the Law of Treaties.

[32] In its observations on general comment 24, the United States of America, the United Kingdom of Great Britain and Northern Ireland and France all express concern at the suggestion that provisions in the Covenant that represent customary international law may not be the subject of reservations.

[33] See "Consolidated guidelines for State reports under the International Covenant on Civil and Political Rights" (CCPR/C/66/GUI/Rev.2), para. C.2.

[34] The United States of America, the United Kingdom of Great Britain and Northern Ireland and France lodged observations on the general comment in letters dated, respectively, 28 March 1995, 21 July 1995, and 8 September 1995. The letters from the United States of America and the United Kingdom of Great Britain and Northern Ireland are reproduced in A/50/40, annex VI, and the letter from France is reproduced in A/51/40, annex VI. Professor Rosalyn Higgins, now a Judge of the International Court of Justice and a former expert on the Human Rights Committee, has responded to these criticisms in the preface to J.P. Gardner, ed., *Human Rights as General Norms and a State's Right to Opt Out* (London, British Institute of International and Comparative Law, 1997).

[35] See *Official Records of the General Assembly, Fifty-second Session, Supplement No. 10* (A/52/10), chap. V, para. 157.

[36] See A/49/537, para. 30.

[37] See A/50/505, para. 17.

[38] See the fifth report of the Special Rapporteur on reservations to treaties (A/CN.4/508, para. 14), where the letter was discussed.

[39] E/CN.4/Sub.2/1999/28, para. 20.

[40] In decision 2001/113 of 25 April 2001, the Commission on Human Rights requested the Subcommission to reconsider its request to appoint Ms. Hampson as a Special Rapporteur, in the light of the work under way by the International Law Commission.

[41] CCPR/C/SR.1852, paras. 26-27.

[42] CCPR/C/SR.1676, para. 8.

[43] CCPR/C/79/Add.68, para.10.

[44] CCPR/CO/69/KWT, para. 4.

[45] CCPR/C/79/Add.50, para. 279.

[46] ST/LEG/SER.E/18 (vol. I), p. 143.

[47] CCPR/C/67/D/845/1999, paras. 6.4-6.7.

[48] ST/LEG/SER.E/18 (vol. I), p. 176. Some States parties lodged objections to this reservation, including objecting to the procedure followed by Trinidad and Tobago, of denouncing the Optional Protocol followed by re-accession with a reservation, which, according to the objecting States parties, circumvented the rules of the law of treaties that prohibited the submission of reservations after ratification.

[49] CCPR/C/70/D/808/1998, paras. 9.2-9.5.

[50] It is to be noted that the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women provides, in article 4 (2) that: "The Committee shall declare a communication inadmissible where: (a) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement" ...

[51] CCPR/C/65/D/716/1996, paras. 6.3-6.5.

[52] See, for example, CAT/C/SR.266, para. 54; CAT/C/SR.267, para. 17; and CAT/C/SR.156, para. 5.

[53] A/54/44, paras. 195-196. The Committee against Torture has adopted several similar concluding observations addressing reservations to article 20 and the absence of declarations under articles 21 and 22. See, for example, A/53/44, para. 240; A/48/44, para. 426.

[54] A/48/44, para. 160.

[55] Concluding observations on the initial report of the United States of America in 2000, (A/55/44, paras. 179, 180).

[56] Two experts of the Committee on the Elimination of Racial Discrimination conducted a study in 1998 on reservations to the International Convention on the Elimination of All Forms of Racial Discrimination and the role of the Committee. See CERD/C/53/Misc.23.

[57] CERD/C/SR.1248, paras. 27, 47.

[58] CERD/C/270/Add.1.

[59] During the discussion of its report, the State party indicated that the "three circle" model was being reviewed and that, under a proposed new policy, the model would be abandoned.

[60] CERD/C/SR.1165, para. 9. This comment was made in the absence of the State party concerned (Fiji) during a discussion in 1996 of States parties' reports that were overdue.

[61] A/55/18, sect. 4.

[62] CERD/C/58/Misc.17/Rev.3, para. 11.

[63] CERD/C/304/Add.20, para. 4.

[64] See, for example, the list of issues concerning the second periodic report of Japan (E/C.12/Q/JAP/1), and the initial report of Ireland (E/C.12/IRE/1).

[65] E/C.12/1995/SR.46, para. 25.

[66] See, for example, E/C.12/1/Add.45, para. 29; E/C.12/1/Add.25, para. 59.

[67] See "General guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, para. 1 (b), of the Convention" (CRC/C/58, para. 11).

[68] A/CONF.157/23, p.11.

[69] See, for example, CRC/C/SR.617, para. 14; CRC/C/SR.637, para. 5; CRC/C/SR.276, para. 25.

[70] See, for example CRC/C/SR.469, paras. 15, 19; CRC/C/SR.363, para. 16; CRC/C/SR.647, paras. 35, 38; CRC/C/SR.621, para. 55.

[71] CRC/C/SR.361, para. 18.

[72] The reservation stated that "allowing a child to change his or her religion runs counter to the provisions of the Islamic Shariah" (see ST/LEG/SER.E/18 (vol. I), p. 235).

[73] CRC/C/SR.482, para. 10.

[74] CRC/C/SR.494, para. 27.

[75] CRC/C/SR.177, para. 47.

[76] See, for example, CRC/C/15/Add.7, para. 7; CRC/C/15/Add.39, paras. 6, 10; CRC/C/15/Add.51, paras. 8, 19; CRC/C/15/Add.74, paras. 11, 28; CRC/C/15/Add.60, paras. 7, 20; CRC/C/15/Add.18, paras. 9, 22.

[77] CRC/C/15/Add.148, para. 7.

[78] CRC/C/61/Add.2, para. 27.

[79] Concluding observations on the initial report of New Zealand in 1997, CRC/C/15/Add.71, paras. 8, 21. The State party had entered three reservations (see ST/LEG/SER.E/18 (vol. I), p. 237). Under the first reservation, nothing in the Convention would prevent the State party from continuing to make a distinction between persons on the basis of their status in the country. In its second reservation, the State party took the view that the rights of the child embodied in article 32 (1) were duly protected by existing legislation and reserved the right not to adopt the additional measures set out in article 32 (2). In its third reservation, the State party reserved the right not to apply article 37 (c) when, inter alia, it was impossible to separate children deprived of liberty from adults due to shortage of adequate facilities.

[80] CRC/C/15/Add.125, paras. 10, 11; CRC/C/15/Add.145, paras. 9, 10.

[81] CRC/C/15/Add.97, para. 8.

[82] "Rules of Procedure of the Human Rights Committee", (CCPR/C/3/Rev.6), rule 69A.

[83] Ibid., rule 68.2.

[84] Ibid., rule 68.3.

[85] CCPR/C/66/GUI/Rev.2, paras. G.6.1 and G.6.2.

Annex I

States parties whose reports are five years or more overdue as of 1 June 2001

A. Initial reports

State party	*Date due*
Albania	10 June 1995
Angola	17 October 1987
Bahamas	5 November 1994
Benin	11 April 1993
Bhutan	30 September 1982
Bosnia and Herzegovina	1 October 1994
Brazil	2 March 1985
Cambodia	14 November 1993
Cape Verde	3 September 1982
Central African Republic	21 July 1992
Comoros	30 November 1995
Congo	25 August 1983
Costa Rica	4 May 1987
Dominica	3 September 1982
Estonia	20 November 1992
Gambia	16 May 1994
Grenada	29 September 1991
Guinea-Bissau	22 September 1986
Haiti	3 September 1982
Kuwait	2 October 1995
Lao People's Democratic Republic	13 September 1982
Latvia	14 May 1993
Liberia	16 August 1985
Malta	7 April 1992
Papua New Guinea	11 February 1996

State party	*Date due*
Saint Kitts and Nevis	25 May 1986
Saint Lucia	7 November 1983
Samoa	25 October 1993
Seychelles	4 June 1993
Sierra Leone	11 December 1989
Suriname	31 March 1994
Tajikistan	25 October 1994
The former Yugoslav Republic of Macedonia	17 February 1995
Togo	26 October 1984

B. Second periodic reports

State party	*Date due*
Angola	17 October 1991
Bhutan	30 September 1986
Bolivia	8 July 1995
Brazil	2 March 1989
Cape Verde	3 September 1986
Congo	25 August 1987
Costa Rica	4 May 1991
Dominica	3 September 1986
Gabon	20 February 1988
Grenada	20 September 1995
Guinea-Bissau	22 September 1990
Haiti	3 September 1986
Lao People's Democratic Republic	13 September 1986
Liberia	16 August 1989
Madagascar	16 April 1994
Malawi	11 April 1992
Mali	10 October 1990

State party	*Date due*
Malta	7 April 1996
Nepal	22 May 1996
Saint Kitts and Nevis	25 May 1990
Saint Lucia	7 November 1987
Sierra Leone	11 December 1993
Togo	26 October 1988
Trinidad and Tobago	11 February 1995

C. Third periodic reports

State party	*Date due*
Angola	17 October 1995
Bhutan	30 September 1990
Brazil	2 March 1993
Cape Verde	3 September 1990
Congo	25 August 1991
Costa Rica	4 May 1995
Cyprus	22 August 1994
Dominica	3 September 1990
El Salvador	18 September 1990
Gabon	20 February 1992
Ghana	1 February 1995
Guinea-Bissau	22 September 1994
Guyana	3 September 1990
Haiti	3 September 1990
Lao People's Democratic Republic	13 September 1990
Liberia	16 August 1993
Malawi	11 April 1996
Mali	10 October 1994
Mauritius	8 August 1993

State party	*Date due*
Paraguay	6 May 1996
Saint Kitts and Nevis	25 May 1994
Saint Lucia	7 November 1991
Senegal	7 March 1994
Togo	26 October 1992

D. Fourth periodic reports

State party	*Date due*
Belarus	3 September 1994
Bhutan	30 September 1994
Bulgaria	10 March 1995
Cape Verde	3 September 1994
Congo	25 August 1995
Dominica	3 September 1994
Ecuador	9 December 1994
El Salvador	18 September 1994
Ethiopia	10 October 1994
Gabon	20 February 1996
Guatemala	11 September 1995
Guinea	8 September 1995
Guyana	3 September 1994
Haiti	3 September 1994
Honduras	2 April 1996
Lao People's Democratic Republic	13 September 1994
Panama	28 November 1994
Poland	3 September 1994
Rwanda	3 September 1994
Saint Lucia	7 November 1995
Saint Vincent and the Grenadines	3 September 1994

State party	*Date due*
Uruguay	8 November 1994
Venezuela	1 June 1996

Annex II

States parties whose reports have been submitted but have not yet been considered by the Committee

State party	*Date due*	*Date received*	*Document symbol*
A. Initial reports			
Fiji	27 September 1996	29 February 2000	CEDAW/C/FIJ/1
Trinidad and Tobago	12 February 1991	23 January 2001	CEDAW/C/TTO/1
B. Second periodic reports			
Armenia[b]	13 October 1998	23 August 1999	CEDAW/C/ARM/2
Czech Republic	24 March 1997	10 March 2000	CEDAW/C/CZE/2
Equatorial Guinea[b]	22 November 1989	6 January 1994	CEDAW/C/GNQ/2-3
Libyan Arab Jamahiriya[b]	15 June 1990	18 February 1999	CEDAW/C/LBY/2
Morocco	21 July 1998	29 February 2000	CEDAW/C/MOR/2
Slovenia[b]	5 August 1997	26 April 1999	CEDAW/C/SVN/2
Uruguay[a b]	8 November 1986	8 February 1998	CEDAW/C/URY/2-3
C. Third periodic reports			
Belgium[b]	9 August 1994	29 October 1998	CEDAW/C/BEL/3-4
Equatorial Guinea[b]	22 November 1993	6 January 1994	CEDAW/C/GNQ/2-3
France[b]	13 January 1993	5 October 1999	CEDAW/C/FRA/3
Guatemala	11 September 1991	20 March 2001	CEDAW/C/GUA/2-3
Iceland[b]	3 July 1994	15 July 1998	CEDAW/C/ICE/3-4
Kenya	8 April 1993	5 January 2000	CEDAW/C/KEN/3-4
Sri Lanka[a b]	4 November 1990	7 October 1999	CEDAW/C/LKA/3-4
Tunisia	20 October 1994	1 June 2000	CEDAW/C/TUN/3-4
Uganda	21 August 1994	22 May 2000	CEDAW/C/UGA/3
Uruguay[a]	8 November 1990	3 February 1998	CEDAW/C/URY/2-3
Zambia[b]	21 July 1994	12 August 1999	CEDAW/C/ZAM/3-4
D. Fourth periodic reports			
Argentina	14 August 1998	18 January 2000	CEDAW/C/ARG/4
Barbados	3 September 1995	14 November 2000	CEDAW/C/BAR/4
Belgium[b]	9 August 1994	29 October 1998	CEDAW/C/BEL/3-4
Denmark[b]	21 May 1996	9 January 1997	CEDAW/C/DEN/4
Greece	7 July 1996	19 April 2001	CEDAW/C/GRC/4-5
Hungary	3 September 1994	19 September 2000	CEDAW/C/HUN/4-5
Iceland[a b]	3 July 1998	15 July 1998	CEDAW/C/ICE/3-4
Japan[b]	25 July 1998	24 July 1998	CEDAW/C/JPN/4
Kenya	8 April 1997	5 January 2000	CEDAW/C/KEN/3-4
Portugal[a b]	3 September 1994	25 October 1999	CEDAW/C/PRT/4
Sri Lanka[a b]	4 November 1994	7 October 1999	CEDAW/C/LKA/3-4

State party	*Date due*	*Date received*	*Document symbol*
Tunisia	20 October 1998	1 June 2000	CEDAW/C/TUN/3-4
Ukraine[b]	3 September 1994	2 August 1999	CEDAW/C/UKR/4-5
Yemen	29 June 1997	8 March 2000	CEDAW/C/YEM/4
Zambia[b]	21 July 1998	12 August 1999	CEDAW/C/ZAM/3-4
E. Fifth periodic reports			
Denmark	21 May 2000	13 June 2000	CEDAW/C/DEN/5
Greece	7 July 2000	19 April 2001	CEDAW/C/GRC/4-5
Hungary	3 September 1998	19 September 2000	CEDAW/C/HUN/4-5
Mexico	3 September 1998	29 November 2000	CEDAW/C/MEX/5
Norway	3 September 1998	23 March 2000	CEDAW/C/NOR/5
Peru	13 October 1999	21 July 2000	CEDAW/C/PER/5
Russian Federation[a] [b]	3 September 1998	3 March 1999	CEDAW/C/USR/5
Ukraine[b]	30 September 1998	2 August 1999	CEDAW/C/UKR/4-5

[a] Reports to be considered by the Committee at its twenty-sixth session, to be held in New York in January 2002.
[b] Reports that have been translated, reproduced and made available in all official languages.

Annex III

States parties that have signed, ratified or acceded to the Optional Protocol as at 8 December 2000

State party	*Date signed*	*Ratification, accession*
Argentina	28 February 2000	
Austria	10 December 1999	6 September 2000
Azerbaijan	6 June 2000	
Bangladesh	6 September 2000	6 September 2000
Belgium	10 December 1999	
Benin	25 May 2000	
Bolivia	10 December 1999	27 September 2000
Bosnia and Herzegovina	7 September 2000	
Brazil	13 March 2001	
Bulgaria	6 June 2000	
Chile	10 December 1999	
Colombia	10 December 1999	
Costa Rica	10 December 1999	
Croatia	5 June 2000	7 March 2001
Cuba	17 March 2000	
Cyprus	8 February 2001	
Czech Republic	10 December 1999	26 February 2001
Denmark	10 December 1999	31 May 2000
Dominican Republic	14 March 2000	
Ecuador	10 December 1999	
El Salvador	4 April 2001	
Finland	10 December 1999	29 December 2000
France	10 December 1999	9 June 2000
Germany	10 December 1999	
Ghana	24 February 2000	
Greece	10 December 1999	

State party	*Date signed*	*Ratification, accession*
Guatemala	7 September 2000	
Guinea-Bissau	12 September 2000	
Hungary		22 December 2000
Iceland	10 December 1999	6 March 2001
Indonesia	28 February 2000	
Ireland	7 September 2000	7 September 2000
Italy	10 December 1999	22 September 2000
Kazakhstan	6 September 2000	
Lesotho	6 September 2000	
Liechtenstein	10 December 1999	
Lithuania	8 September 2000	
Luxembourg	10 December 1999	
Madagascar	7 September 2000	
Malawi	7 September 2000	
Mali		5 December 2000
Mexico	10 December 1999	
Mongolia	7 September 2000	
Namibia	19 May 2000	26 Ma 2000
Netherlands	10 December 1999	
New Zealand	7 September 2000	7 September 2000[a]
Nigeria	8 September 2000	
Norway	10 December 1999	
Panama	9 June 2000	9 May 2001
Paraguay	28 December 1999	14 May 2001
Peru	22 December 2000	9 April 2001
Philippines	21 March 2000	
Portugal	16 February 2000	
Romania	6 September 2000	
Russian Federation	8 May 2001	

State party	*Date signed*	*Ratification, accession*
Sao Tome and Principe	6 September 2000	
Senegal	10 December 1999	26 May 2000
Sierra Leone	8 September 2000	
Slovakia	5 June 2000	17 November 2000
Slovenia	10 December 1999	
Spain	14 March 2000	
Sweden	10 December 1999	
Tajikistan	7 September 2000	
Thailand	14 June 2000	14 June 2000
The former Yugoslav Republic of Macedonia	3 April 2000	
Turkey	8 September 2000	
Ukraine	7 September 2000	
Uruguay	9 May 2000	
Venezuela	17 March 2000	

Declarations and reservations[b]

Bangladesh

Declaration:

The Government of the People's Republic of Bangladesh declares in accordance with article 10 (1) of the Optional Protocol that it would not undertake the obligations arising out of articles 8 and 9.

Belgium

Upon signature:

Declaration:

The Flemish, French and German-speaking communities of Belgium are equally bound by this signature.

Cuba

Upon signature:

Declaration:

The Government of the Republic of Cuba declares that it does not recognize the competence of the committee established by virtue of articles 8 and 9 of the Optional Protocol.

Notes

[a] With a declaration to the effect that "consistent with the constitutional status of Tokelau and taking into account its commitment to the development of self-government through an act of self-determination under the Charter of the United Nations, this ratification shall not extend to Tokelau unless and until a declaration to this effect is lodged by the Government of New Zealand with the depositary on the basis of appropriate consultation with that territory".

[b] Unless otherwise indicated, the declarations and reservations were made upon ratification or accession.

Annex IV

States that have not ratified or acceded to the Convention

Africa

- Sao Tome and Principe
- Somalia
- Sudan
- Swaziland

Asia and the Pacific

- Afghanistan
- Bahrain
- Brunei Darussalam
- Iran (Islamic Republic of)
- Kiribati
- Marshall Islands
- Micronesia (Federated States of)
- Nauru
- Oman
- Palau
- Qatar
- Solomon Islands
- Syrian Arab Republic
- Tonga
- United Arab Emirates

Western European and Other

- Monaco
- San Marino
- United States of America
- Holy See

Annex V

States parties that have accepted the amendment to article 20, paragraph 1, of the Convention

State party	*Acceptance date*
Australia	4 June 1998
Austria	11 September 2000
Brazil	5 March 1997
Canada	3 November 1997
Chile	8 May 1998
Denmark	12 March 1996
Finland	18 March 1996
France	8 August 1997
Guatemala	3 June 1999
Italy	31 May 1996
Liechtenstein	15 April 1997
Madagascar	19 July 1996
Malta	5 March 1997
Mexico	16 September 1996
Mongolia	19 December 1997
Netherlands	10 December 1997[a]
New Zealand	26 September 1996
Norway	29 March 1996
Panama	5 November 1996
Republic of Korea	12 August 1996
Sweden	17 July 1996
Switzerland	2 December 1997
Turkey	9 December 1999
United Kingdom of Great Britain and Northern Ireland	19 November 1996[b]

[a] For the Kingdom of the Netherlands in Europe, the Netherlands Antilles and Aruba.

[b] For the United Kingdom of Great Britain and Northern Ireland, the Isle of Man, the British Virgin Islands and the Turks and Caicos Islands.

Annex VI

Legal opinion submitted by the Office of Legal Affairs concerning the implementation of article 28 of the Convention

1. Article 28 of the Convention on the Elimination of All Forms of Discrimination against Women reads as follows:

> "1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
>
> "2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
>
> "3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received."[a]

2. With regard to the implementation of article 28, paragraph 2, of the Convention, the following may be noted:

(a) Contrary to the International Convention on the Elimination of All Forms of Racial Discrimination,[b] article 20 of which provides that "a reservation shall be considered incompatible or inhibitive if at least two thirds of the States parties to this Convention object to it", the Convention on the Elimination of All Forms of Discrimination against Women does not offer any specific criterion of incompatibility. Accordingly, a question of interpretation of the Convention is involved here;

(b) Assuming a dispute arose with regard to the interpretation of article 28 of the Convention, article 29 thereof would become applicable (arbitration or, failing agreement on the organization of the arbitration, referral to the International Court of Justice in conformity with the Statute of the Court). Paragraph 2 of article 29, to the effect that parties may declare that they shall not be bound by paragraph 1 of that article, should be particularly noted in this context;

(c) The depository (in this instance, the Secretary-General) does not have the power to interpret the Convention, although he would certainly refer to the parties any matter that should be settled so as to enable him to discharge his functions. In this context, article 28, paragraph 1, of the Convention is quite clear that the depository should receive and circulate the text of reservations;

(d) The Committee on the Elimination of Discrimination against Women is established by article 17 "for the purpose of considering the progress made in the implementation of the ... Convention". Under article 21, the Committee is to report annually to the General Assembly on its activities and "may make suggestions and general recommendations based on the examination of reports and information received from the States Parties". Thus, the functions of the Committee do not appear to include a determination of the incompatibility of reservations, although reservations undoubtedly affect the application of the Convention and the Committee might have to comment thereon in its reports in this context.

Notes

[a] See General Assembly resolution 34/180, annex.

[b] See General Assembly resolution 2106 A (XX), annex.